

## REMARKS

This responds to the Office Action mailed on July 14, 2005, and the references cited therewith.

Claims 25, 29 and 40 are amended; as a result, claims 1, 3-8, 10-14, 17-31, 38-40, and 42-44 are now pending in this application.

### §103 Rejection of the Claims

Claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, 42-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsan et al. (U.S. Patent No. 5,455,043).

Claims 13, 14, 21, 22, 28, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsan et al. (U.S. Patent No. 5,455,043) as applied to claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, 42-44 as above, and further in view of Wick et al. (U.S. Patent No. 6,010,715).

Claim 1 is as follows:

A vapor emitting patch comprising:

a base portion comprising a hydrogel;

a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and

a vapor emitting material that is a drug stored within the vapor emitting portion.

Claims 10, 40, 42, 43, 44 and all dependent claims also include these elements.

As has been described, the Cartmell et al. patent, 5,501,661, describes a dressing for a wound that includes a hydrogel pad and a porous material overlaying the hydrogel and acting as an adhering layer that adheres the hydrogel to a wound without a use of an adhesive. There is no vapor emitting material stored within a vapor emitting portion as is claimed. The Examiner has argued that there must be some sort of material transferred from a wound to the environment and named, oxygen. However, oxygen is not a vapor. It is a gas. This is what the Cartmell patent states:

“The wound dressing product herein can be manufactured to any desirable size to provide a thin-film, fluid-absorbing dressing for a wound of any size. The wound dressing herein is conformable, adhesive around its perimeter portion, and nonadhesive over the wound site. The present invention also includes a moisture- and vapor-permeable porous layer which permits the transpiration of moisture through the wound dressing.”

The “transpiration of moisture” functionality of Cartmell et al. teaches away from the device claimed which includes “a vapor emitting material stored within the vapor emitting portion,” and indicates that the storage of a vapor emitting material within the Cartmell et al. bandage is undesirable. The passage relied upon by the Examiner indicates that oxygen passes through the bandage which is described in Cartmell et al. However, oxygen is a gas within the air and is not a “vapor emitting material” as suggested by the Examiner. The Applicant asserts that an accumulation of vaporous material within the bandage of Cartmell et al. is not a desirable consequence of using the Cartmell et al. bandage because the vaporous material would be coming from the wound. There is no motivation for combining with any other reference to achieve this result.

Because of the application of the Cartmell et al device, is a wound dressing, any vapor exchange occurs after the device is applied. There is no vapor emitting material added to the device prior to applying to a wound. Further, there is no suggestion that the feature of a “vapor emitting material stored within the vapor emitting portion” would be useful or desirable.

The Examiner in the present Office Action has argued that the “motivation to substitute the polyolefin foam of Cartmell et al. with the polyolefin foam taught by Fischel-Ghodsian et al. is because of the increased porosity of the cell sizes in the foam.” The Applicant asserts that the Examiner is using the claims herein to provide the motivation because the Examiner has failed to cite a passage in the Cartmell et al. patent that shows that Cartmell et al. cared about increased porosity of cell sizes in the foam. Here is what the Cartmell patent states about the backing layer in col. 2, lines 53-57:

“The backing layer possesses sufficient porosity to allow an adhesive contact to be made between the backing layer and the hydrogel material present on the first side of the support layer.”

The motivation for adjusting porosity in the Cartmell et al. patent is altering the degree of contact with the hydrogel. The motivation is not related at all to adjusting vaporization of a vapor emitting material within a vapor emitting portion of the cellular structure as is claimed. This is because the Cartmell et al patent does not describe a device with a vapor emitting material. Why is “increased porosity” important to the Cartmell et al device? Why would Cartmell et al. have been motivated to increase porosity? Where is the suggestion in the Cartmell et al. patent for “increasing porosity of the backing layer”? The Examiner has argued that references cannot be attacked separately where rejections are based upon a combination. However, there must be something that the Examiner can point to in each reference to suggest combination with the other reference. The Applicant challenges the Examiner to identify a passage in the Cartmell et al. reference that suggests combination with the Fischel-Ghodsian reference.

The Fischel-Ghodsian patent, 5,455,043 (‘043), describes a device for releasing vapors in a controlled manner. The device includes a cellular portion for emitting vapor and a base, to which the cellular portion is adhered. The base is described as being a “laminate that consists of a metal foil lined polymer. The polymer may be any polymer that is compatible with the active compound. Suitable candidate polymers include polyethylene terephthalate, high density polyethylene, low density polyethylene, polypropylene, and polyvinylchloride and polyethylene/aluminized polyester/ethylene vinyl acetate.”

Neither the ‘043 patent nor the Wick patent describes a use of a hydrogel or anything like a hydrogel. Additionally, Applicant asserts that there is no motivation to combine a chemical release structure, including a transdermal, with a wound dressing to obtain the claimed embodiments of the invention. As discussed above, there is no teaching in Cartmell suggesting a desirability of storing a vapor emitting material in a device prior to application. To the contrary, Cartmell et al. teaches away from this feature. Thus, the Cartmell et al. and Fischel-Ghodsian and Wick patents do not suggest combination and the references do not render the claimed invention embodiments obvious.

**AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111**

Serial Number: 09/691,896

Filing Date: October 19, 2000

Title: HYDROGEL VAPOR DISPENSER

---

**Page 11**

Dkt: 1335.001US1

The amendments to claims 25, 29 and 40 are to correct typographical errors, and do not present new matter.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

MARK H. THENO

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6976

Date 17 Jan 06

By Janal M. Kalis  
Janal M. Kalis  
Reg. No. 37,650

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 17 day of January, 2006.

JONATHAN FERGUSON

Name

Signature

Jonathan Ferguson